STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company, d/b/a AmerenCIPS; Central Illinois Public Service Company, d/b/a AmerenCIPA; and Illinois Power Company, d/b/a AmerenIP	:	No. 07-0539
Approval of the Energy Efficiency Demand Response Plan	:	

INITIAL BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

Eric Robertson
Ryan Robertson
Lueders Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040
erobertson@lrklaw.com
ryrobertson@lrklaw.com

Conrad Reddick
Attorney at Law
1015 Crest
Wheaton, IL 60187
conradreddick@aol.com

January 14, 2008

INDEX

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company, d/b/a AmerenCIPS; Central Illinois Public Service Company, d/b/a AmerenCIPA; and Illinois Power Company, d/b/a AmerenIP	:	No. 07-0539
Approval of the Energy Efficiency Demand Response Plan	:	

INITIAL BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

The Illinois Industrial Energy Consumers are a diverse group of large electricity consumers, including Air Products & Chemicals Company, Caterpillar Inc., Illinois Cement Company, Cargill, Inc., and Enbridge energy LLP, participating in this case. They will refer to themselves as the Illinois Industrial Energy Consumers ("IIEC" or "IIEC Companies"). Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("ICC" or "Commission"), (83 Ill. Adm. Code Part 200.800), and the briefing schedule set by the Administrative Law Judge ("ALJ"), the IIEC Companies named above present their Brief in this docket for the Commission's consideration.[1]

I.

INTRODUCTION

This proceeding was initiated by Illinois Power Company, d/b/a AmerenIP, Central Illinois Public Service Company, d/b/a AmerenCIPS, and Central Illinois Light Company, d/b/a AmerenCILCO (collectively "Ameren" or "Companies"), pursuant to Section 12-103(f) of the Public Utilities Act ("PUA") (220 ILCS 5/12-103(f)). Pursuant to that section, Ameren was required to

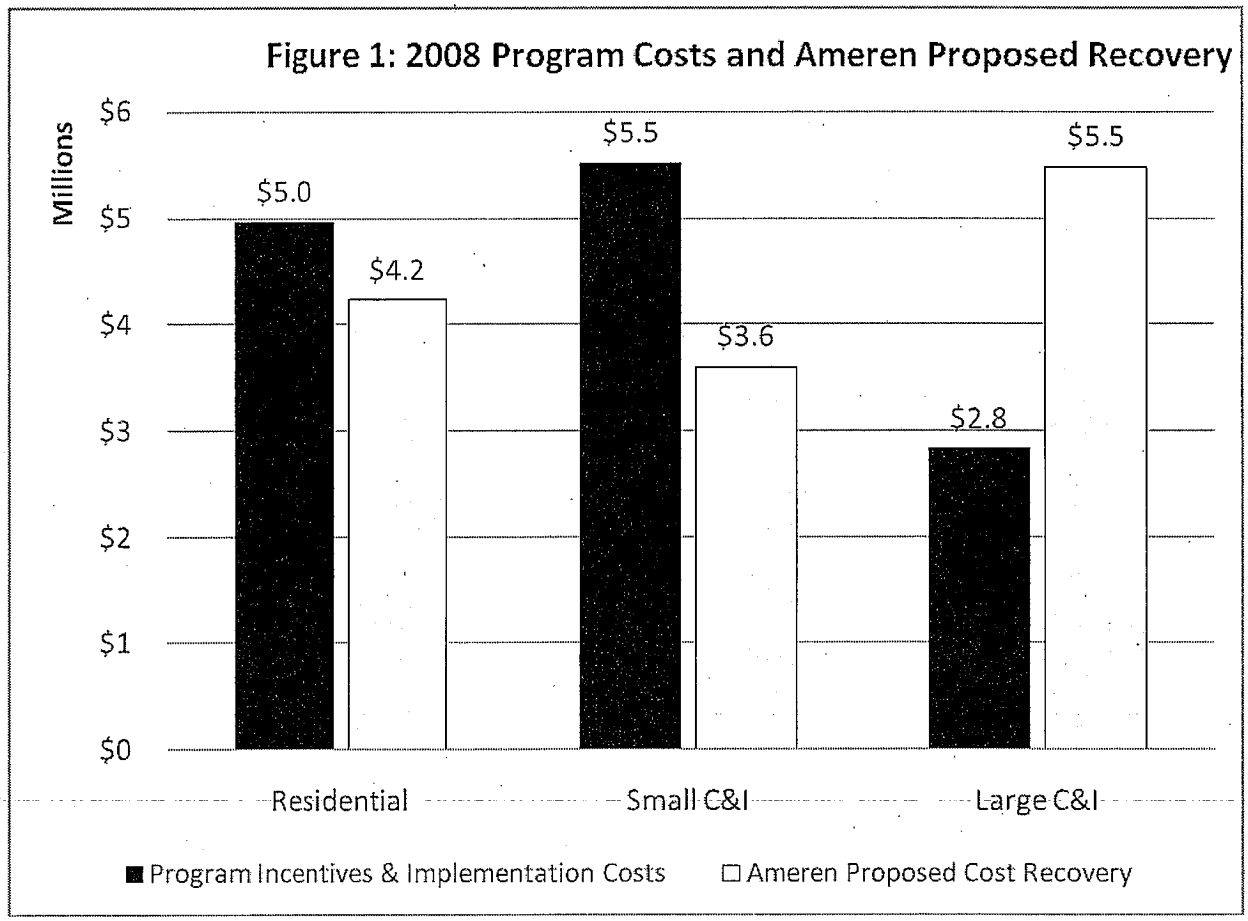
[1]Citations in this Brief will identify the witness, the party, the exhibit number, page number and line numbers. A sample citation follows: Stephens, IIEC Ex. 1.0 Corr. at 5:100-101.

present an Energy Efficiency ("EE") and Demand Response ("DR") Plan that included:

> ". . . a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to insure the recovery of the prudently and reasonably incurred costs of Commission-approved programs (Energy Efficiency and Demand Response Programs)."
> (220 ILCS 5/12-103(f)(6) (explanation added)).

The cost-recovery tariff mechanism ("recovery mechanism") proposed by Ameren would collect program costs from all customers on the basis of a uniform equal cents per kWh charge applied to all electric energy delivered to Ameren customers, regardless of whether those customers purchase their electric energy from Ameren, and regardless of whether the program expenditures directly benefit them or others in their respective classes.

IIEC Companies in this proceeding generally support energy efficiency and demand response programs. However, they are seriously concerned with the recovery mechanism proposed by Ameren. They believe that Ameren's proposal is neither just nor reasonable as those terms are used in Article IX of the PUA. (220 ILCS 9-101 et. seq.). In any event, the proposal is inequitable in that there is a mismatch between program costs and cost recovery. That is, some classes are required to pay charges for programs well in excess of the dollar value of the programs designed for and assigned to that class - - as much as double in some cases. Figure 1 below highlights this inequity.



Ameren has agreed that a uniform cents per kWh charge is likely to result in the Large C&I customer class paying as a class charges that exceed the dollar value of the programs and measures applicable to them as a class. (IIEC Group Ex. A, Ameren Resp. to IIEC DR 2.2). Therefore, IIEC has proposed a modified cost recovery mechanism that better matches program costs and collections for affected customer classes. The IIEC approach allocates the cost of EE-DR Programs to the customer classes for which the Programs are designed. In addition, IIEC's proposal will still allow

Ameren to recover the prudently and reasonably incurred cost of providing its EE programs as required by Section 12-103(f)(6) of the PUA. (220 ILCS 5/12-103(f)(6)).

In addition, IIEC's proposal does not dictate the programs to be deployed by Ameren over the relevant planning period. It maintains Ameren's flexibility to adjust its plan and the charges applicable to each class of customers, to reflect the programs and actual program costs attributable to customers within those classes as the programs are revised. IIEC's approach will neither increase or decrease the amount of energy saved through the various programs.

For the reasons described below IIEC recommends that the Commission adopt IIEC's modified cost recovery mechanism instead of the Ameren cost recovery mechanism.

II.

ARGUMENT

A. IIEC's Cost Recovery Mechanism Should Be Adopted

The objective of IIEC's cost recovery mechanism is to balance program costs with cost recovery, by class, and for each year. To illustrate, if the programs designed for a particular class account for 25% of the program costs, then that class should be responsible for 25% of the cost recovery. (Stephens, IIEC Ex. 1.0 Corr. at 12:203-207).

The estimated charges under IIEC's cost recovery mechanism, using Ameren's program spending estimates and expected customer class consumption levels, are compared to Ameren's uniform charge shown in Table 1 below:

TABLE 1

ESTIMATED UNIT CHARGES FOR COST RECOVERY

(CENTS PER KWH)

CLASS	2008	2009	2010
Residential	0.041	0.097	0.158
Small C&I	0.053	0.098	0.141
Large C&I	0.018	0.034	0.048
Ameren Charge	0.036	0.075	0.115

(*Id.* at 13:Table 2; Ameren Ex. 2.1 at 16, Table 5).

Under the IIEC's proposal, cost recovery is not intended to be fixed throughout the course of the plan. To the extent Ameren shifts program focus over time, the cost recovery charges can be modified in accordance with Ameren's updated program costs. Similarly, if assumptions as to class participation levels are refined based on experience, it would be appropriate to modify charges to reflect changes in program focus as well. (*Id.*) at 13:220-230). IIEC's approach is well documented in the record and provides for this flexibility. (*See*, Stowe, IIEC Ex. 2.0 Corr. at 6-17:100-301).

The IIEC approach should be adopted in this proceeding for several reasons discussed in greater detail below. First, unlike the Ameren approach, the IIEC cost recovery mechanism properly recognizes the differences between customer classes. Second, the IIEC cost recovery mechanism more closely matches those program costs and cost recovery by class. Third, the IIEC approach gives the utility the opportunity to recover prudently and reasonably incurred costs associated with its EE-DR Programs and the flexibility to alter, amend, modify, change, delete or add to those

programs, with ICC approval, over the relevant planning period. Fourth, the IIEC approach is more consistent with the Commission's preference for cost based rates.

1. IIEC's Proposal Properly Recognizes Class Differences

IIEC witness Stephens testified that while Ameren has directed distinct EE programs to the residential class and to the combined commercial and industrial ("C&I") classes, it treats all customers as one class for the purposes of cost recovery. (Stephens, IIEC Ex. 1.0 Corr. at 3:62-67). That is, Ameren proposes to recover the combined cost of all programs on the basis of a single per kWh charge, uniformly applied to each customer class without regard to the classes they were designed for.

Ameren has sensibly recognized the differences in the types of individual EE measures (residential, commercial and industrial) contained within its EE programs. For example, Ameren has associated compact fluorescent light bulbs, energy efficient appliances and residential heating and air conditioning measures with the residential class. It has proposed measures relating to compressed air, process heating, and machine drives for the industrial class. (Stephens, IIEC Ex. 1.0 Corr. at 4:75-82; *see also*, Ameren Ex. 2.1 at 23, Table 8). No witness in this proceeding disputes that Ameren's EE-DR programs and measures appropriately recognize differences in usage characteristics among classes and designs programs/measures for those individual classes on the basis of those differences.

Ameren has traditionally reflected differences in customer usage and resulting cost differences in its rates. (*Id.* at 4:83-85). For example, prior to January 2, 2007, Ameren's own bundled service rates reflected these differences. Rate 1, for AmerenCIPS and AmerenCILCO, and

Rate 2, for AmerenIP, were the principal rates for residential customers. Rate 13 for Ameren-CILCO, Rate 2B for AmerenCIPS and Rates 11/19 for AmerenIP were the principal rates for commercial customers (non-residential customers with demands less than 1 MW). Rate 21 for AmerenCILCO, Rate 9B for AmerenCIPS and Rate 21/24 for AmerenIP were the principal rates for industrial customers (non-residential customers with demands greater than 1 MW or more). (*Id.* at 4-5:85-97).

Ameren's current delivery service rates distinguish between residential and non-residential customers. Ameren's rate structure further divides the non-residential class, on the basis of customer demand levels such as 150 kW and 1 MW. (*Id.* at 5:98-101).

However, as noted above, Ameren has not recognized any of these class differences in its proposed cost recovery approach. In other words, Ameren ignores the fact that under its Plan, different EE programs and measures apply to different customer classes. Therefore, IIEC has proposed a cost recovery mechanism that does reflect those differences by assigning each class responsibility for its program costs and using those costs to develop a separate per kWh charge for each customer class (Residential, Small C&I (customers with demands of less than 1 MW), and Large C&I (customers with demands of more than 1 MW)). (*Id.* at 6:121-127).

IIEC's proposed customer groupings are consistent with the break point between the DS-3 customer class and DS-4 customer class in Ameren's current delivery service rate structure . (*Id.* at 6-7:134-140).

IIEC notes that the Federal Energy Regulatory Commission accounting practices and the ICC's reporting and accounting practices, also distinguish between customer groups using a break

point of 1 MW. (*Id.* at 6:127-132; 7:141-145). Furthermore, the IIEC approach is consistent with Ameren's current billing practices. (*Id.* at 7:149-152). Finally, the IIEC approach is consistent with current ComEd rate class break points between the Very Large Load class and the Large Load Class, as well as IIEC's recommended customer class groupings in the ComEd Energy Efficiency case, ICC Docket 07-0540. (*Id.* at 7:fn. 3). Given the parallel between Ameren's EE-DR plan and the ComEd plan the 1 MW breakpoint would be an efficient break point for customer classes. (*Id.*). No party has disputed the appropriateness of IIEC's recommended break point for customer classes.

The circumstances described above, clearly support adoption of IIEC's cost recovery mechanism so that class differences are properly recognized in assigning cost responsibility for EE programs and measures and in the cost recovery mechanism used to recover the utilities' reasonably and prudently incurred costs.

2. IIEC's Cost Recovery Mechanism More Closely Matches Program Costs and Cost Recovery

Using three customer classes based on Ameren's program designs, (viz, Residential, Small C&I and Large C&I), and data provided in Ameren's EE-DR Plan (Ameren Ex. 2.1) and testimony, IIEC witnesses were able to determine the energy usage and program costs for each class. This information allowed them to compare program costs and cost recovery on a customer class basis.

IIEC witnesses were able to determine energy usage for each class. Ameren proposes a single kWh charge, in each year, applicable to all customers equally, for its cost recovery mechanism. Therefore, the cost recovery from each class for each year under the Ameren approach will correspond directly to the percentage of energy delivered to that class. (*Id.* at 8:160-163 and Table 1; Stowe, IIEC Ex. 2.0 Corr. at 4-6:71-98). IIEC witnesses also determined program costs for

the various customer classes using the program descriptions in Ameren's plan. (Stowe, IIEC Ex. 2.0 Corr. at 6-14:99-272).

IIEC's comparison of class program costs and class cost recovery under the Ameren proposed cost recovery mechanism, showed that in 2008, the Large C&I class will receive energy efficiency programs and measures valued at $2.8 million, but pay $5.5 million in charges. On the other hand, the Small C&I class would receive $5.5 million worth of programs and measures while paying only $3.6 million in charges. (Stephens, IIEC Ex. 1.0 Corr. at 9-11:180-185). IIEC's analysis also demonstrated that under the Ameren approach, this disparity continues to increase for the Large C&I class in subsequent years. (*Id.*).

Such a disparity is unfair. Customer classes should not be required to pay for programs and measures unavailable to members of that class, when a cost recovery mechanism, that more closely matches cost to cost recovery, such as the one as proposed by IIEC in this proceeding, is available and technically feasible. Ameren witness Jones has testified there is no technical barrier to implementing the IIEC approach. (Jones, Ameren Ex. 8 at 8:164-167). Because IIEC's cost recovery mechanism more closely matches program costs and cost recovery than the Ameren cost recovery mechanism, IIEC's mechanism should be adopted in this proceeding.

3. IIEC's Approach Gives the Utility the Opportunity to Recover Prudently and Reasonably Incurred Costs and the Flexibility to Modify, Add To or Change its Programs Over the Relevant Planning Period.

IIEC's recovery mechanism does not dictate or constrain the programs to be deployed by the utility to any class of customers over the three year plan period. Such decisions are left to the utility and the Commission. Under IIEC's approach, cost recovery follows program implementation, not

the reverse. The Company knows the types and costs of programs to be funded for a particular class of customers for a particular year and, under the IIEC approach, that knowledge will determine the class recovery charge. Thus, Ameren will retain the flexibility it claims needs to meet mandated megawatt hour target reductions. (Stephens, IIEC Ex. 1.0 Corr. at 14:232-240; Voytas, Ameren Ex. 2.0 at 40-41:945-948).

IIEC's cost recovery mechanism also does not affect total cost recovery for Ameren's EE-DR Programs. Ameren will recover the same amount of program costs as under IIEC's proposal as it does under its proposed mechanism. (*Id.* at 241-243). No witness for Ameren has argued otherwise. Because IIEC's approach does not impact or hinder any aspect of the Company's planning or implementation of its programs, it does not decrease the energy or demand reductions anticipated by the Company.

Thus, IIEC 's cost recovery mechanism permits recovery of the Company's reasonably and prudently incurred program costs and does not impair the flexibility Ameren claims it needs to implement new or modified programs and measures in order to achieve the applicable energy savings goals.

4. IIEC's Cost Recovery Mechanism Better Reflects Cost of Service Principles.

IIEC's cost recovery mechanism more closely reflects the traditional cost of service ratemaking principles established by this Commission than does Ameren's approach. As explained above, IIEC's approach assigns cost responsibility for various programs to the customer classes for which the programs are designed and implemented. On the other hand, Ameren's uniform cents per

kWh charge recovers the combined cost of all EE programs from all customers on the basis of energy delivered to individual customers.

Staff witness Lazare believes Ameren cost recovery proposal is reasonable and refers to these EE-DR program costs as "usage related." (Lazare, Staff Ex. 3.0 at 3:66-72). However, he admits that they are not, in fact, caused by customers' usage. (Lazare, Tr. 136-137). The costs Staff and Ameren propose to recover on the basis of kWh of electricity delivered, do not increase with more customer usage or decrease with reduced customer usage. (*Id.*). Staff Witness Ebrey's description of these costs confirms that they are not related to energy delivered or used. According to Ms. Ebrey, Ameren's Rider EDR allows Ameren to recover incremental costs of its EE-DR measures which include, but are not limited to:

> "(a) fees, charges, billings, or assessments related to the Measures; (b) costs or expenses associated with equipment, devices, or services that are purchased, provided, installed, operated or maintained, or monitored for the Measures; (c) the revenue requirement equivalent of the return of and on capital investment associated with the Measures . . .; and (d) all legal and consultant costs associated with the Measures . . . .
>
> * * * *
>
> . . . incremental expenses for wages, salaries and benefits of Company employees . . .."
>
> (Ebrey, Staff Ex. 2.0 at 3 quoting Ameren Rider EDR.)

Clearly, these costs (even when aggregated for all customers) are in no way a function of electricity delivered or used by a customer or class. Mr. Lazare is simply wrong in his assertion that the program costs are usage related in any respect that has any bearing on proper cost recovery.

The costs of the EE programs Ameren proposes for each class are estimated as part of Ameren's proposed Plan. These costs are not the same for each customer class, but vary with the distinctive programs being implemented. (Lazare, Tr. 138). Because the Ameren approach collects the costs in question on a uniform cents per kWh basis from all customers, across all customer classes, and regardless of whether the underlying program costs are associated with customers in a particular class – it causes cross subsidies among classes. IIEC's approach eliminates these interclass class cross subsidies, and better reflects cost of service principles.

Illinois utility rates have traditionally reflected a similar allocation of costs at the customer class level, with average or uniform rates within the class. This recognition of major cost of service differences among customer classes is how the Commission has achieved a balance between the cost of determining and recovering ever more detailed cost allocations and the Commission's policy of cost based rates. IIEC's proposal moves the recovery of EE-DR program costs to that balance, while the Ameren proposal does not.[2]

B. Responses to IIEC's Proposal

1. Ameren Position

Ameren witness Leonard M. Jones, was the witness responding to IIEC's proposed cost recovery mechanism. Mr. Jones noted that the Ameren cost recovery mechanism collected costs for EE-DR programs from all customers through a uniform cents per kWh charge. (Jones, Ameren Ex.

---

[2]While IIEC has chosen not to dispute the proposed recovery of costs on a simple usage-based charged within classes, IIEC does not concede that the energy efficiency and demand response programs which are mandated to avoid or delay "the need for new generation, transmission, and distribution infrastructure" (*See*, Section 12-102(a)), could not be recovered over some other basis in the future, such as demand.

8.0 at 7-8:160-163). Thus Ameren agrees that the Ameren method does not differentiate cost recovery by class of customers.

Mr. Jones correctly described IIEC's proposal as one that contemplates dividing the cost of these programs among customer groups (Residential, Large C&I and Small C&I) and recovering the costs in proportion to expected expenditures on measures within those customer groups. (*Id.* at 7:144-146). He also correctly noted that IIEC's groups correspond to Ameren's current rate classes. (*Id.* at 7:143-159). Mr. Jones also agreed that Ameren would not object to the customer class definitions proposed by IIEC for its cost recovery method. (IIEC Group Ex. A, Ameren Resp. to IIEC DR 2.1).

As noted in Section II.A.2. of this Brief, Ameren foresees no technical barriers to IIEC's proposal, if the Commission wishes to adopt it. (*Id.* at 8:164-168). He did indicate that Ameren would need the ability to modify or alter programs and possibly cost recovery factors going forward. (*Id.* at 8:173-174). However, Mr. Jones correctly recognized that IIEC's proposal would give Ameren that flexibility. (*See, Id.* at 8:173-176, citing Stephens, IIEC Ex. 1.0 at 14). Mr. Jones also suggested that the administrative costs in question would be relatively small by explaining that the costs would ultimately involve only a few hours of work each week. (*Id.* at 8:171-173). He further concludes the administrative costs he had in mind would be significantly mitigated by the fact that the trackting of programs and reallocation of costs under IIEC's proposal would be done only once annually.. (IIEC Grp. Ex. A, Ameren Resp. to IIEC DR 2.3). He further agreed that IIEC's approach could be implemented without significant administrative burden or cost under such circumstances. (*Id.*).

Therefore, Ameren has raised no serious objection to IIEC's proposal, has indicated that it is technically feasible and that the costs associated with IIEC's approach would be relatively small.

2. Staff Position

Staff finds Ameren's cost recovery mechanism to be reasonable. (Lazare, Staff Ex. 3.0 at 66-68). Staff has also indicated it intended to address whether EE-DR related costs " . . . should be allocated among all ratepayers on a uniform cents per kWh basis." (Staff Memo at 1). Mr. Lazare's testimony does not support a uniform cents per kWh charge.

First, no other party has supported the cost recovery approach presented by Ameren.

Second, the Company witness presenting Rider EDR did not justify its implementation on any particular grounds, other than the ground that Ameren was required under Section 16/12-103 of the PUA (220 ILCS 5/12-103) to include a cost recovery mechanism in its plan. (*See*, Bilsland, Ameren Ex. 5.0 at 2-6:42-120).

Third, Section 12-103 is devoid of any language specifically mandating the type of recovery mechanism to be used by utilities to recover their EE-DR program costs. Indeed, it is the intent of the legislature that costs be allocated to those causing the cost to be incurred and that rates be designed to recover those costs. (220 ILCS 5/1-102(a)(iv) and (b)(iii)).

Fourth, Mr. Lazare's position is based on the false premise that the costs in question are "usage related" and the record clearly establishes they are not. Mr. Lazare admitted in cross-examination these costs do not change in any way with an increase or decrease in customer or class usage. (*See*, Lazare, Tr. 136-137).

Also, while Mr. Lazare indicated that the cost recovery mechanism should be based, at least in part, on benefits, he has not attempted to quantify or determine the distribution of benefits among customer classes. (Lazare, Tr. 134-135). To Mr. Lazare's knowledge, no other party has made such a determination. (Lazare, Tr. 136). Mr. Lazare simply assumed without any empirical evidence, that all customers and customer groups would benefit equally from the costs incurred for the EE-DR plan.

In addition, any indirect benefits to non-participating customers are likely to be small because of the size of the Ameren proposed energy savings compared to the MISO wholesale energy market. Mr. Lazare agreed that MISO was the relevant market and that approximately 654 million MWH of electric energy was delivered into the MISO market in 2006. (Lazare, Tr. 133-134). The Ameren plan contemplates 77,000 MWH of savings in the year 2008. (Ameren Ex. 2.1 at 1). This savings represents approximately 0.01% of the relevant market. (i.e., less than one hundredth of one percent). Downward pressure on market prices or reductions in market prices are likely to be relatively small as a result. Furthermore, it is the customers that continue to buy electricity from the electric utility who are most likely to benefit from the program in this way. The energy reductions may help those customers change in class usage profiles that can affect Ameren's regulated rates. (Stephens, IIEC Ex. 1.0 Corr. at 1112:193-197). However, not all customers purchase electricity from Ameren. (*See*, 220 ILCS 6/16-113 as amended by P.A. 095-0481). Therefore, even the benefits Mr. Lazare identifies as accruing to all customers are not evenly distributed among customer classes and groups. They do not justify allocation of these costs among customer classes on the basis of a uniform cents per kWh charge for all classes.

Mr. Lazare claimed that the costs in question were related to the use of electric energy, because Section 12-103 of the PUA intends to reduce electricity usage. (Lazare, Staff Ex. 3.0 at 4).[3] Therefore, he concludes that recovery on a uniform cents per kWh basis is appropriate. (*See*, Lazare, Staff Ex. 3.0 at 5:92-94).

Mr. Lazare has admitted that these costs do not decrease or increase with an increase or decrease in energy usage. They simply are not related to the kWh quantities of energy consumption or delivery. In addition, Mr. Lazare's approach has dangerous implications. The fundamental purpose of an electric utility is to provide electric energy to some customers and deliver it to all customers. Simply because the purpose of the electric utility is to provide and deliver electric energy, does not mean that all costs incurred by the electric utility are justifiably allocated among customers on the basis of energy usage. Traditionally, the Illinois Commerce Commission and other Commissions have looked at whether the costs in question are a function of customer energy usage, customer demand, or the existence of the customer on the utility's system. No one has suggested that it is appropriate to allocate all utility costs on the basis of energy usage based on a uniform cents per kWh charge to all customers simply because the primary purpose of the utility is to provide and deliver electric energy. The Commission should not adopt such an approach here simply because the purpose of Section 12-103 of the PUA is to reduce energy usage.

Finally, Mr. Lazare has ignored the fact that the uniform cents per kWh charge is collected on the basis of energy used, not on the basis of energy reduced. Therefore, the charge does not even

---

[3]Mr.Lazare overlooks that the demand response programs are intended to reduce investment in electric plant (*See*, Section 12-103(a)) which would justify allocation on demand not energy. Mr. Lazare argues the programs are primarily energy related. (*Id.* at 4:87-88).

meet his own standard of a cost causation relationship. The record shows that energy savings are widely disparate among customer classes. Therefore, allocation of costs even on the basis of uniform energy reductions does not justify a uniform equal cents per kWh charge in this case. (Lazare, Tr. 137-138).

For these reasons and for other reasons identified in other portions of IIEC's Brief, Mr. Lazare's position should not be accepted by the Commission in this proceeding.

III.

CONCLUSION

For the reasons stated above, IIEC's proposed cost recovery mechanism should be adopted by the Commission.

Respectfully submitted,

BY: _____

Eric Robertson

62437.1